

## **EXHIBIT LIST**

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|-----------|--|
| EXHIBIT A | Interconnection Agreement (General Terms and Conditions, Attachment 2, and Amendments) |
| EXHIBIT B | Letter to Jake Jennings from Jerry Hendrix, dated April 26, 2002                       |
| EXHIBIT C | Affidavit of Shelley Padgett   |
| EXHIBIT D | Letter to Jerry Hendrix from Jake Jennings, dated May 3, 2003                          |
| EXHIBIT E | Affidavit of Jerry Hendrix   |
| EXHIBIT F | Letter from Jake Jennings to Jerry Hendrix, dated May 23, 2002                         |

## **EXHIBIT LIST**

- Exhibit A: Interconnection Agreement (General Terms and Conditions, Attachment 2, and Amendments) (488 pages)
- Exhibit B: Letter to Jake Jennings from Jerry Hendrix, dated April 26, 2002
- Exhibit C: Affidavit of Shelley Padgett
- Exhibit D: Letter to Jerry Hendrix from Jake Jennings, dated May 3, 2002
- Exhibit E: Affidavit of Jerry Hendrix
- Exhibit F: Letter to Jerry Hendrix from Jake Jennings, dated May 23, 2002

# **EXHIBIT A**

## **EXCERPTS FROM INTERCONNECTION AGREEMENT**

identifying the circuits to be converted shall serve as a substitute for submission of a local service request (LSR), only until such time as the LSR process is modified to accommodate such requests.

- 4.5.1.5 BellSouth may, at its sole expense, and upon thirty (30) days notice to NewSouth, audit NewSouth's records not more than once in any twelve month period, unless an audit finds non-compliance with the local usage options referenced in the June 2, 2000 Order, in order to verify the type of traffic being transmitted over combinations of loop and transport network elements. If, based on its audits, BellSouth concludes that NewSouth is not providing a significant amount of local exchange traffic over the combinations of loop and transport network elements, BellSouth may file a complaint with the appropriate Commission, pursuant to the dispute resolution process set forth in this Agreement. In the event that BellSouth prevails, BellSouth may convert such combinations of loop and transport network elements to special access services and may seek appropriate retroactive reimbursement from NewSouth.
- 4.5.2 In addition to the circumstances under which NewSouth may identify special access circuits that qualify for conversions to EELs (referenced in Section 4.5.1.2 above), NewSouth also shall be entitled to convert special access circuits to unbundled network elements pursuant to the terms of this section 4.5.2 et seq.
- 4.5.2.1 Upon request by NewSouth, BellSouth will convert special access circuits to combinations of an unbundled loop connected to special access transport provided that: (1) the combination terminates to a NewSouth collocation arrangement; and (2) NewSouth certifies, in the manner set forth in Section 4.5.2 above, that at least 75% of the unbundled network element(s) component of the facility is used to provide originating and terminating local voice traffic. The recurring charges for such combinations shall be the sum of the recurring charge for the applicable UNE loop, as set forth in Exhibit C to this Attachment, and all applicable recurring charges for the special access transport facility, as set forth in the BellSouth tariff under which such facilities were ordered. The nonrecurring charges for such combinations shall be an amount equal to all applicable conversion charges set forth in Exhibit C to this Attachment for conversion of special access circuits to EELs, plus the applicable nonrecurring cross connect charges (set forth in Attachment 4 to this Agreement) required to connect the facility to NewSouth's collocation arrangement. Such combinations that terminate in NewSouth collocation arrangements may be connected by NewSouth via cross-connects to BellSouth services used by NewSouth to transport traffic between NewSouth's collocation space and NewSouth's POP.
- 4.5.2.2 Upon request from NewSouth to convert special access circuits pursuant to Section 4.5.2, BellSouth shall have the right, upon 10 business days notice, to conduct an audit prior to any such conversion to determine whether the subject facilities meet local usage requirements set forth in Section 4.5.2. An audit conducted pursuant to this Section shall take into account a usage period of the past three (3) consecutive

months, and shall be subject to the requirements for audits as set forth in the June 2, 2000 Order, except as expressly modified herein.

- 4.5.3 In consideration of Section 4.5.2.1 above, and subject to Section 4.5.7 below, for those special access circuits identified by NewSouth in writing as of January 19, 2001 as being eligible for conversion pursuant to the terms of this Agreement, BellSouth will provide to NewSouth a credit in an amount equal to three times the difference between the monthly special access rates for such circuits and the monthly rates for the combinations to which those circuits are converted.
- 4.5.3.1 For circuits converted pursuant to one of the three options made available to NewSouth in Section 4.5.1, the credit will be in an amount equal to three times the difference between the monthly special access rates for such circuits and the monthly UNE recurring charges for the loop, transport and multiplexing (if applicable), as set forth in Exhibit C to this Attachment, that, in combination, form an EEL.
- 4.5.3.2 For circuits converted pursuant to the fourth option made available to NewSouth in Section 4.5.2, the credit will be in an amount equal to three times the difference between the monthly special access rates for such circuits and the sum of the monthly UNE recurring charges for the loop, as set forth in Exhibit C to this Attachment, and the monthly recurring charge for the special access transport facility, as set forth in the BellSouth tariff under which such facility was ordered.
- 4.5.3.3 Such credits will be applied to NewSouth's bill within sixty (60) days following execution of this Agreement.
- 4.5.3.4 Within ten (10) days following execution of this Agreement, NewSouth shall certify to BellSouth in writing that the circuits designated as of January 19, 2001 meet significant local use requirements of one of the four conversion options set forth above. Such certification shall include a designation by NewSouth of which of the particular four conversion options specified herein is applicable to each of the individual circuits designated as of January 19, 2001.
- 4.5.3.5 BellSouth shall assign a project management team and designate a project manager to facilitate the timely conversion of special access circuits. BellSouth and NewSouth will participate in a joint implementation meeting within fifteen (15) days following execution of this Agreement, or within 15 days of any subsequent request for conversion, to establish a schedule for conversion of the identified special access circuits. BellSouth shall complete conversions of all circuits identified by NewSouth as of January 19, 2001 within 3 months of the joint implementation meeting, unless an alternative completion date is agreed to by the Parties. For purposes of conversion of the circuits identified by NewSouth as of January 19, 2001, NewSouth's spreadsheet identifying the circuits to be converted shall serve as a substitute for submission of a local service request (LSR). For subsequent conversion requests pursuant to Sections 4.5.1 and 4.5.2 above, submission of a spreadsheet identifying the circuits to be

# **EXHIBIT B**

**LETTER TO JAKE JENNINGS FROM JERRY HENDRIX,  
DATED APRIL 26, 2002**



BellSouth Telecommunications  
Interconnection Services  
675 W. Peachtree Street, NE  
Room 34S91  
Atlanta, GA 30075

Jerry D. Hendrix  
Executive Director  
  
(404) 927-7503  
Fax (404) 529-7839  
e-mail: jerry.hendrix@bellsouth.com

April 26, 2002

VIA ELECTRONIC AND OVERNIGHT MAIL

Jake Jennings  
Vice President of Regulatory Affairs  
NewSouth Communications, Corp.  
NewSouth Center  
Two N. Main Street  
Greenville, SC 29601

Dear Jake:

NewSouth has requested BellSouth to convert numerous special access circuits to Unbundled Network Elements (UNEs). Pursuant to those request, BellSouth has converted many of those circuits in accordance with BellSouth procedures. Some of the circuits were not converted due to various reasons, (e.g., previously disconnected, duplicates, etc.).

Consistent with the FCC Supplemental Order Clarification, Docket No. 96-98, BellSouth has selected an independent third party, American Consultants Alliance (ACA), to conduct an audit. The purpose of this audit is to verify NewSouth's local usage certification and compliance with the significant local usage requirements of the FCC Supplemental Order.

In the Supplemental Order Clarification, Docket No. 96-98 adopted May 19, 2000 and released June 2, 2000 ("Supplemental Order"), the FCC stated:

"We clarify that incumbent local exchange carriers (LECs) must allow requesting carriers to self-certify that they are providing a significant amount of local exchange service over combinations of unbundled network elements, and we allow incumbent LECs to subsequently conduct limited audits by an independent third party to verify the carrier's compliance with the significant local usage requirements."

Accompanying this letter, please find a Confidentiality and Non-Disclosure Agreement on proprietary information and Attachment A, which provides a list of the information ACA needs from NewSouth.

NewSouth is required to maintain appropriate records to support local usage and self-certification. ACA will audit NewSouth's supporting records to determine compliance of

each circuit converted with the significant local usage requirements of the Supplemental Order.

In order to minimize disruption of NewSouth's daily operations and conduct an efficient audit, ACA has assigned senior auditors who have expertise in auditing, special access circuit records and the associated facilities, minutes of use traffic studies, CDR records recorded at the switch for use in billing, and Unbundled Network Elements.

BellSouth will pay for American Consultants Alliance to perform the audit. In accordance with the Supplemental Order, NewSouth is required to reimburse BellSouth for the audit if the audit uncovers non-compliance with the local usage options on 20% or more of the circuits audited. This is consistent with established industry practice for jurisdictional report audits. BellSouth hopes that in the event circuits are found to be non-compliant, the parties can reach agreement as to the appropriate remedy; however, in the event that the parties cannot, in accordance with the interconnection agreements, BellSouth will seek dispute resolution from the appropriate Commission(s). BellSouth will seek reimbursement for the cost of the audit and will seek to convert the circuits back to special access for the appropriate non-recurring charges for the special access services. In addition, BellSouth will seek reimbursement for the difference between the UNE charges paid for those circuits since they were converted and the special access charges that should have applied.

Per the Supplemental Order, BellSouth is providing at least 30 days written notice that we desire the audit to commence on May 27, 2002 at NewSouth's office in Greenville or another NewSouth location as agreed to by both parties. Our experience in other audits has indicated that it typically takes two weeks to complete the review. Thus, we request that NewSouth plan for ACA to be on-site for two weeks. Our audit team will consist of 3 auditors and an ACA partner in charge.

NewSouth will need to supply conference room arrangements at your facility. Our auditors will also need the capability to read your supporting data, however you choose to provide it (file on PC, listing on a printout, etc.). It is desirable to have a pre-audit conference next week with your lead representative. Please have your representative call Shelley Walls at (404) 927-7511 to schedule a suitable time for the pre-audit planning call.

BellSouth has forwarded a copy of this notice to the FCC, as required in the Supplemental Order. This allows the FCC to monitor implementation of the interim requirements for the provision of unbundled loop-transport combinations.

If you have any questions regarding the audit, please contact Shelley Walls at (404) 927-7511. Thank you for your cooperation.

Sincerely,

Jerry D. Hendrix  
Executive Director



Enclosures

cc: Michelle Carey, FCC (via electronic mail)  
Jodie Donovan-May, FCC (via electronic mail)  
Andrew Caldarello, BellSouth (via electronic mail)  
Larry Fowler, ACA (via electronic mail)  
Sr. Vice President of Network Planning & Provisioning, NewSouth (via U.S. mail)

## **ATTACHMENT A**

NewSouth  
April 28, 2002

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### **Audit to Determine the Compliance Of Circuits Converted by NewSouth From BellSouth's Special Access Tariff to Unbundled Network Elements With The FCC Supplemental Order Clarification, Docket No. 96-98**

#### **Information to be Available On-site May 27, 2002**

Prior to the audit, ACA or BellSouth will provide NewSouth the circuit records as recorded by BellSouth for the circuits requested by NewSouth that have been converted from BellSouth's special access services to unbundled network elements. These records will include the option under which NewSouth self-certified that each circuit was providing a significant amount of local exchange service to a particular customer, in accordance with the FCC's Supplemental Order Clarification.

#### **Please provide:**

NewSouth's supporting records to determine compliance of each circuit converted with the significant local usage requirements of the Supplemental Order Clarification.

First Option: NewSouth is the end user's only local service provider.

- ☐ Please provide a Letter of Agency or other similar document signed by the end user, or
- ☐ Please provide other written documentation for support that NewSouth is the end user's only local service provider.

Second Option: NewSouth provides local exchange and exchange access service to the end user customer's premises but is not the exclusive provider of an end user's local exchange service.

- ☐ Please provide the total traffic and the local traffic separately identified and measured as a percent of total end user customer local dial tone lines.
- ☐ For DS1 circuits and above please provide total traffic and the local voice traffic separately identified individually on each of the activated channels on the loop portion of the loop-transport combination.
- ☐ Please provide the total traffic and the local voice traffic separately identified on the entire loop facility.
- ☐ When a loop-transport combination includes multiplexing (e.g., DS1 multiplexed to DS3 level), please provide the above total traffic and the local voice traffic separately identified for each individual DS1 circuit.

Third Option: NewSouth provides local exchange and exchange access service to the end user customer's premises but is not the exclusive provider of an end user's local exchange service.

- ☐ Please provide the number of activated channels on a circuit that provide originating and terminating local dial tone service.

## **ATTACHMENT A**

NewSouth  
April 26, 2002

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- ☐ Please provide the total traffic and the local voice traffic separately identified on each of these local dial tone channels.
- ☐ Please provide the total traffic and the local voice traffic separately identified for the entire loop facility.
- ☐ When a loop-transport combination includes multiplexing (e.g., DS1 multiplexed to DS3 level), please provide the above total traffic and the local voice traffic separately identified for each individual DS1 circuit.

Depending on which one of the three circumstances NewSouth chose for self certification, other supporting information may be required.

THIS NONDISCLOSURE AGREEMENT (herein the "Agreement") is dated and effective as of \_\_\_\_\_ ("Effective Date"), between BellSouth Telecommunications, Inc., a Georgia corporation, with its corporate office located at 675 W. Peachtree, Atlanta, Georgia ("BellSouth"), and NewSouth Communications, Corp., a Delaware corporation, located at Greenville, South Carolina ("Discloser," "you" or "your").

**RECITALS**

A. BellSouth acknowledges that it may be necessary for you to provide BellSouth and its Affiliates with certain information, considered by you to be confidential, valuable and proprietary, which BellSouth and its Affiliates are receiving for the purpose of verifying your compliance with the significant local usage requirements of the FCC Supplemental Order Clarification, Docket No. 96-98 (the "Project"). "Affiliates" means any company owned in whole or in part, now or in the future, by BellSouth Corporation or by one or more of its direct or indirect subsidiaries controlled by BellSouth Corporation.

B. Such confidential and proprietary information may include, but is not limited to, your business, financial and technical information, proposed products and services and like information, and the results of or information contained in any audit conducted in connection with the Project (collectively your "Information").

IN CONSIDERATION of the mutual promises and obligations contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. BellSouth will protect Information you provide to BellSouth, and Information that any auditor engaged in connection with the Project provides to BellSouth, from use, distribution or disclosure except in connection with the Project. BellSouth may disclose Information only to the Affiliates, employees, consultants, contractors and agents of BellSouth with a need to know such Information in connection with the Project. BellSouth will make copies of Information only as necessary for its use in connection with the Project. Notwithstanding the foregoing, BellSouth may disclose such Information to the extent reasonably necessary to enforce its rights under any interconnection agreements between you and BellSouth or under rules and orders of the Federal Communications Commission applicable to the Project. BellSouth will cooperate with you to protect the confidentiality of such Information in the event of disclosure pursuant to this paragraph.
2. All Information must be provided by you to BellSouth in written or other tangible or electronic form, marked by you with a confidential and proprietary notice. Information orally provided by you to BellSouth must be designated as

confidential and proprietary prior to such oral disclosure and must be reduced by you to writing, marked with a confidential and proprietary notice, and provided to BellSouth within ten (10) calendar days after such oral disclosure.

3. Your Information does not include:

- (a) any information you publicly disclose;
- (b) any information you in writing authorize BellSouth or its Affiliates to disclose without restriction;
- (c) any information already lawfully known to BellSouth or its Affiliates at the time you disclose it, without an obligation to keep it confidential;
- (d) any information BellSouth or its Affiliates lawfully obtain from any source other than you, provided that such source lawfully disclosed such information;
- (e) any information BellSouth or its Affiliates independently develop; or
- (f) any information BellSouth or its Affiliates is required to disclose to any governmental agency or court by written order, subpoena, regulation or process of law, but only to the extent of such required disclosure.

4. You will not identify BellSouth or its Affiliates in any advertising, sales material, press release, public disclosure or publicity without prior written authorization of BellSouth. No license under any trademark, patent or copyright is either granted or implied by disclosure of Information to BellSouth.

5. The term of this Agreement and BellSouth's obligations hereunder will extend for a period of one (1) year after the Effective Date.

6. No forbearance, failure or delay by either party in exercising any right, power or privilege is waiver thereof, nor does any single or partial exercise thereof preclude any other or future exercise thereof, or the exercise of any other right, power or privilege.

7. If and to the extent any provision of this Agreement is held invalid or unenforceable at law, such provision will be deemed stricken from the Agreement and the remainder of the Agreement will continue in effect and be valid and enforceable to the fullest extent permitted by law.

8. This Agreement is binding upon and inures to the benefit of the parties and their heirs, executors, legal and personal representatives, successors and assigns, as the case may be.

**PRIVATE/PROPRIETARY/LOCK**

**CONTAINS PRIVATE AND/OR PROPRIETARY INFORMATION. MAY NOT BE USED OR DISCLOSED OUTSIDE THE BELLSOUTH COMPANIES EXCEPT PURSUANT TO A WRITTEN AGREEMENT. MUST BE STORED IN LOCKED FILES WHEN NOT IN USE.**



## Nondisclosure Agreement

Incoming Information NDA (12/99)

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You may not assign this Agreement except by prior written consent of BellSouth, and any attempted assignment without such authorization is void.

9. This Agreement shall be deemed executed in the State of Georgia, U.S.A., and is to be governed and construed by Georgia law, without regard to its choice of law provisions. The parties agree that exclusive jurisdiction and venue for any action to enforce this Agreement are properly in the applicable federal or state court for Georgia.

10. This Agreement is the entire agreement between the parties hereunder and may not be modified or amended except by a written instrument signed by both parties. Each party has read this Agreement, understands it and agrees to be bound by its terms and conditions. There are no understandings or representations with respect to the subject matter hereof, express or implied, that are not stated herein. This Agreement may be executed in counterparts, and signatures exchanged by facsimile or other electronic means are effective for all purposes hereunder to the same extent as original signatures.

PRIVATE/PROPRIETARY/LOCK

CONTAINS PRIVATE AND/OR PROPRIETARY INFORMATION. MAY NOT BE USED OR DISCLOSED OUTSIDE THE BELL SOUTH COMPANIES EXCEPT PURSUANT TO A WRITTEN AGREEMENT. MUST BE STORED IN LOCKED FILES WHEN NOT IN USE.



## Nondisclosure Agreement

Incoming Information NDA (12/99)  
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Page 3 of 3

IN WITNESS WHEREOF, the parties' authorized representatives have signed this Agreement:

**BELLSOUTH:** \_\_\_\_\_ **DISCLOSER:** \_\_\_\_\_

**By:** \_\_\_\_\_ **By:** \_\_\_\_\_  
(Authorized Signature) (Authorized Signature)

**Name:** \_\_\_\_\_ **Name:** \_\_\_\_\_  
(Print or Type) (Print or Type)

**Title:** \_\_\_\_\_ **Title:** \_\_\_\_\_

PRIVATE/PROPRIETARY/LOCK  
CONTAINS PRIVATE AND/OR PROPRIETARY INFORMATION. MAY NOT BE USED OR DISCLOSED OUTSIDE THE BELLSOUTH COMPANIES  
EXCEPT PURSUANT TO A WRITTEN AGREEMENT. MUST BE STORED IN LOCKED FILES WHEN NOT IN USE.

# **EXHIBIT C**

**AFFIDAVIT OF SHELLEY PADGETT**

In the Matter of:	)	
	)	
BellSouth Telecommunications, Inc.	)	
	)	
Complainant,	)	
	)	Case No. _____
v.	)	
	)	
NewSouth Communications Corp.	)	
	)	
Defendant.	)	
_____	)	

**AFFIDAVIT OF SHELLEY PADGETT**  
**ON BEHALF OF BELL SOUTH TELECOMMUNICATIONS, INC.**

Comes the affiant, Shelley Padgett, and being duly sworn, deposes and says:

1. My name is Shelley Padgett. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375. I currently am a Manager-Regulatory and Policy and Support for BellSouth Telecommunications, Inc. In that capacity I am responsible for transport issues, including EELs and EEL audits.
2. Complainant BellSouth, a wholly-owned subsidiary of BellSouth Corp., is a Georgia corporation with its principal place of business located at 675 W. Peachtree Street, N.E., Atlanta, Georgia, 30375.
3. BellSouth is an incumbent local exchange carrier providing telecommunications services in a nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee).
4. Defendant NewSouth is a Delaware corporation with its principal place of business at Two North Main Street, Greenville, South Carolina, 29601, (864) 672-5877.



4. Defendant NewSouth is a Delaware corporation with its principal place of business at Two North Main Street, Greenville, South Carolina, 29601, (864) 672-5877.

5. NewSouth is a competitive local exchange carrier providing local and long distance voice and data services throughout BellSouth's service territory.

6. On May 18, 2001, the Parties entered into an interconnection agreement that afforded NewSouth the ability to order Enhanced Extended Links ("EELs") from BellSouth (the "Agreement"). The Agreement also afforded NewSouth the right to convert special access circuits to EELs so long as NewSouth was meeting one of three safe harbors set forth in the Agreement (and also set forth in the Supplemental Order Clarification) and so long as NewSouth provided a significant amount of local exchange traffic over the EEL. Agreement, Att. 2, § 4.5.1.2, Exh. A. The parties also agreed to a fourth conversion option, over and above those set forth in the Supplemental Order Clarification, that afforded NewSouth the right to convert special access circuits to a combination of a UNE loop and special access transport. Agreement, Att. 2, § 4.5.2 et seq., Exh. A.

7. In the late summer 2001, pursuant to the conversion process set forth in the Agreement, NewSouth began to submit requests to BellSouth via e-mail to convert special access circuits to UNEs. According to the procedures agreed to by the Parties, the e-mails were to attach one or more spreadsheets, using a particular format. The spreadsheets were to identify the circuits to be converted and which of the four safe harbor options applied to that circuit. Since 2001, NewSouth has requested conversion of thousands of circuits from special access services to UNEs. In addition, NewSouth has ordered approximately 1,700 new EELs from BellSouth as well.

8. Pursuant to the terms of the Agreement, BellSouth processed both orders for new EELs and the conversions from special access circuits to UNEs based on NewSouth's self-

certifications. At no time did BellSouth demand or request an audit of any NewSouth circuits prior to the conversion of those circuits from special access to EELs. With respect to the Option 4 conversions, BellSouth did not invoke its right to audit the circuits prior to conversion in a good-faith effort to process the conversions as expeditiously as possible.

9. This concludes my statement.

Shelley W. Padgett  
Shelley Padgett

Affirmed to before me this 14<sup>th</sup> day  
of October, 2003.

Micheale F. Bixler  
Notary Public

MICHEALE F. BIXLER  
Notary Public, Douglas County, Georgia  
My Commission Expires November 3, 2005

# **EXHIBIT D**

**LETTER TO JERRY HENDRIX FROM JAKE JENNINGS,  
DATED MAY 3, 2002**



May 3, 2002

Via Overnight Mail

Mr. Jerry Hendrix  
BellSouth Telecommunications  
Interconnection Services  
675 W. Peachtree Street, NE  
Room 34S91  
Atlanta, GA 30075

RE: EEL Audit

Dear Jerry:

I am receipt of your April 26, 2002 letter notifying NewSouth of BellSouth's intent to audit special access circuits that have been converted to unbundled loop/transport combinations ("Enhanced Extended Links - EELs"). NewSouth is willing to work with BellSouth in order to facilitate the audit of NewSouth's special access circuits converted to EELs subject to the requirements set forth in the Federal Communications Commission's Supplemental Order Clarification, Docket No. 96-98, adopted May 19, 2000 and released, June 2, 2000 ("*Supplemental Order*").

As you point out in your April 26, 2002 letter, it is BellSouth's obligation to "*hire and pay for*" the independent auditor unless it is determined that NewSouth is non-complaint with the Supplemental Order. NewSouth disagrees with BellSouth's interpretation of the Supplement Order requiring NewSouth to pay for the audit if NewSouth is non-compliant with the "*local usage options on 20% or more of the audited circuits.*" There is no such requirement listed in the FCC's Supplemental Order. NewSouth is willing to discuss the cost of the audit based on a finding of non-compliance, if such discussions are warranted. To the extent that we are unable to reach agreement concerning the final disposition of the audit, NewSouth will seek appropriate relief through the Dispute Resolution Process of the BellSouth/NewSouth Interconnection Agreement, dated May 18, 2001.

In addition, in the Supplemental Order, order at para. 32 states the FCC "*emphasize(s) that an audit should not impose an undue financial burden on smaller requesting carriers that may not keep extensive records, and find that, in the event of an audit, the incumbent LEC should verify compliance for these carriers using the records that the carriers keep in the normal course of business.*" Therefore, NewSouth will provide the BellSouth audit team with only those records that are kept in the normal course of business. To the extent that BellSouth's audit places undue financial burden on NewSouth, we hereby notify BellSouth of our intent to seek reimbursement of reasonable costs and expenses imposed by this audit.

NewSouth Communications Corporation  
Two North Main Street, Greenville, South Carolina 29601  
Telephone: 864-672-5000 // Facsimile: 864-672-5105  
[www.newsouth.com](http://www.newsouth.com)



NewSouth sees no need to execute the proposed BellSouth Confidentiality and Non-Disclosure Agreement attached to your April 26, 2002 letter. Instead, NewSouth recommends that we utilize the confidentiality provisions set forth in Section 10, General Terms and Conditions – Part B of the BellSouth/NewSouth Interconnection Agreement dated May 18, 2002.

In order to facilitate the audit of NewSouth's special access circuits "converted" to EELs, I have assigned John Fury, Manager of Carrier Relations to act as a single point of contact for the BellSouth audit team. Mr. Fury can be reached at 864-672-5064 to discuss the audit. We will contact BellSouth to schedule a pre-audit conference call.

Sincerely,

A handwritten signature in black ink, appearing to read "Jake E. Jennings". The signature is fluid and stylized, with a long horizontal stroke at the end.

Jake E. Jennings  
Vice President - Regulatory Affairs  
NewSouth Communications Corp.

cc: Kyle D. Dixon, FCC (via electronic mail)  
Matthew Brill, FCC (via electronic mail)  
Daniel Gonzalez, FCC (via electronic mail)  
Jordan Goldstein, FCC (via electronic mail)  
Dorothy Attwood, FCC (via electronic mail)  
Michelle Carey, FCC (via electronic mail)  
Jodie Donovan-May, FCC (via electronic mail)  
Andrew Caldarello, BellSouth (via electronic mail)  
Larry Fowler, BellSouth (via electronic mail)  
John Fury, NewSouth (via electronic mail)  
Amy Gardner, NewSouth (via electronic mail)

NewSouth Communications Corporation  
Two North Main Street, Greenville, South Carolina 29601  
Telephone: 864-672-5000 // Facsimile: 864-672-5105  
[www.newsouth.com](http://www.newsouth.com)

# **EXHIBIT E**

**AFFIDAVIT OF JERRY HENDRIX**

In the Matter of:	)	
	)	
BellSouth Telecommunications, Inc.	)	
	)	
Complainant,	)	
	)	Case No. _____
v.	)	
	)	
NewSouth Communications Corp.	)	
	)	
Defendant.	)	
_____	)	

**AFFIDAVIT OF JERRY D. HENDRIX**  
**ON BEHALF OF BELL SOUTH TELECOMMUNICATIONS, INC.**

Comes the affiant, Jerry Hendrix, and being duly sworn, deposes and says:

1. My name is Jerry Hendrix. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375. I currently am Assistant Vice President – Pricing at BellSouth Telecommunications, Inc. (“BellSouth”). I am responsible for overseeing the negotiation of Interconnection Agreements between BellSouth and Competitive Local Exchange Carriers (“CLECs”). Prior to assuming my present position, I held various positions in the Network Distribution Department and then joined the BellSouth Headquarters Regulatory Organization. I have been employed with BellSouth since 1979.

2. BellSouth Telecommunications, Inc. (“BellSouth”) is an incumbent local exchange carrier that provides local service in a nine-state region in the Southeast. NewSouth provides telecommunications services in each of BellSouth’s nine states.

3. I executed the Interconnection Agreement and Amendments to that Agreement with NewSouth on behalf of BellSouth. The Parties voluntarily negotiated the terms and conditions of the Agreement pursuant to Section 252(a)(1) of the Communications Act of 1996 (“Act”).



The Parties did not arbitrate any of the provisions in the Agreement before a state public service commission.

4. In Section 4.5.1.5 of the Agreement, the Parties agreed that BellSouth would have an unqualified right to audit NewSouth's EELs for compliance with the requirement that NewSouth provide a significant amount of local exchange traffic over the EELs upon 30 days notice and at BellSouth's expense. Agreement, Att. 2, § 4.5.1.5, Exh. A. The parties specifically did not incorporate the terms of the Supplemental Order Clarification into the audit provision. BellSouth is entitled to conduct an audit of NewSouth's EELs under these terms.

5. BellSouth selected American Consultants Alliance to audit NewSouth's EELs in accordance with the terms of the Agreement. This firm is not related to BellSouth nor affiliated with BellSouth in any way. Nor is the firm subject to the control or influence of BellSouth or dependent on BellSouth.

6. Pursuant to the Agreement, BellSouth requested an audit of NewSouth's EELs on April 26, 2002. On this date, I sent NewSouth a letter notifying NewSouth of BellSouth's intent to conduct an audit thirty days hence "to verify NewSouth's local usage certification and compliance with the significant local usage requirements of the FCC Supplemental Order." My letter informed NewSouth that BellSouth had selected an independent auditor to conduct the audit, and that BellSouth would incur the costs of the audit (unless the auditors found NewSouth's circuits to be non-compliant). *See Letter from Jerry Hendrix to Jake Jennings, 4/26/02, Exh. B.*

7. I received a response from Jake Jennings of NewSouth on May 3, 2002 in which NewSouth stated that "NewSouth is willing to work with BellSouth in order to facilitate the audit of NewSouth's special access circuits converted to EELs subject to the requirements set forth in the Federal Communications Commission's *Supplemental Order Clarification...*" *Letter from*

*Jake Jennings to Jerry Hendrix, 5/3/02, Exh. D.* While NewSouth disputed BellSouth's characterization of NewSouth's obligation to pay for the audit based on a finding of non-compliance, NewSouth agreed to go forward with the audit and address the compensation issue if it arose.

8. Approximately three weeks after NewSouth agreed to the audit, on May 23, 2002, NewSouth sent a second letter to BellSouth, this time stating that "[b]ased upon new information and further consideration, NewSouth formally disputes BellSouth's request to audit special access circuits that have been converted to unbundled loop/transport combinations..." *Letter from Jake Jennings to Jerry Hendrix, 5/23/02, Exh. F.* In its letter, NewSouth cited the following two reasons as the basis for refusing BellSouth's audit request, assertedly relying on the *Supplemental Clarification Order*: "(1) audits may not be routine and only be conducted under limited circumstances; and (2) audit must be performed by an independent third party hired and paid for by the incumbent local exchange company." *Id.* NewSouth's letter did not discuss or in any way address the terms of the parties' Agreement, which clearly permitted the requested audit.

9. On June 6, 2002, I responded to NewSouth's May 23, 2002 letter refusing an audit. Although not directly relevant to BellSouth's audit rights, my June 6, 2002 letter addressed NewSouth's purported reliance on the *Supplemental Order Clarification*. My letter confirmed that BellSouth did not conduct routine audits, but rather conducts such audits "when it believes such an audit is warranted due to a concern that the local usage options may not be met." My letter also pointed out that BellSouth had not conducted any audits in the two years since the release of the *Supplemental Order Clarification*. Finally, my letter explained that BellSouth's selected auditor was an independent third party, with no affiliation with BellSouth.

10. Having failed to receive a response from NewSouth for three weeks, I sent another letter on June 27, 2002. This letter stated that, because NewSouth had not responded to BellSouth's letter of June 6, 2002, BellSouth "assume[s] that NewSouth is agreeable to proceeding with the audit immediately. ACA's audit team will commence the audit at NewSouth's offices in Greenville on July 15."

11. On June 29, 2002, NewSouth responded to my June 27, 2002 letter, once again refusing to submit to the audit. In this letter, NewSouth continued to cite to its position that BellSouth was required to demonstrate a "reasonable concern" for the audit.

12. I responded to NewSouth's letter of June 27, 2002 on July 17, 2002. Among other things, my letter reiterated that BellSouth had the right to audit pursuant to the Agreement. In addition, although not required to explain our reasons for conducting an audit, I addressed the need for an audit in this letter. My letter noted that NewSouth "asks for substantiation of BellSouth's concerns." My letter then proceeded to set forth a number of concerns. In relevant part, my letter noted that "BellSouth has had issues with NewSouth in the past regarding its ability to appropriately jurisdictionalize traffic it sends to BellSouth. In light of those past difficulties, it is more than reasonable to question NewSouth's self-certification of the amount of local traffic on the circuits in question." Second, my letter noted that "traffic studies show that NewSouth's traffic in several states is largely non-local. In South Carolina, 75% of all NewSouth's traffic is local; in Louisiana, only 66% of NewSouth's and 0% of Universal Communications' traffic is local; in North Carolina, just 45% is local; and in Tennessee, only 38% of all NewSouth's traffic is local." My letter then noted that, despite the aforementioned traffic studies, "NewSouth is claiming that, on these circuits, the traffic mix is substantially different than the statewide average." My letter further reminded NewSouth that "your agreement is a nine-state, regional agreement. It does not require that the audits be conducted on

a state-by-state basis, nor do the Commission rules contain such a requirement.” Finally, my July 17, 2002 letter notified NewSouth that “[i]n the event that NewSouth does not begin to cooperate with the audit as required by the Interconnection Agreement, BellSouth will have no choice but to interpret it as a material breach of the contract and will be forced to take the appropriate steps.”

13. BellSouth received a response to my July 17, 2002 letter on August 7, 2002. Again, NewSouth stated that it would not submit to an audit, but did not address BellSouth’s right to conduct the audit pursuant to the clear terms of the Agreement.

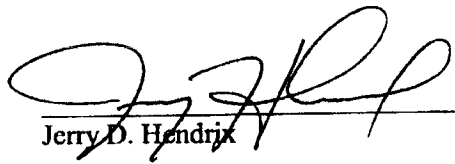
14. On September 18, 2002, I sent yet another letter to NewSouth requesting the audit. NewSouth did not respond to this letter. Consequently, on May 21, 2003, I sent NewSouth another letter stating that “[s]ince we have not received a response from you regarding our letter of September 18, 2002, BellSouth has scheduled an audit consistent with the terms of the Interconnection Agreement dated May 18, 2001.”

15. On May 27, 2003, NewSouth responded to BellSouth’s September 18 letter and reiterated that it would not consent to an audit pursuant to the terms of the Agreement. Throughout the remainder of 2002 and until the summer of 2003, I continued to exchange letters on the audit issue with Jake Jennings of NewSouth. Despite the fact that BellSouth satisfied all prerequisites for BellSouth to conduct an audit, NewSouth continued to refuse an audit.

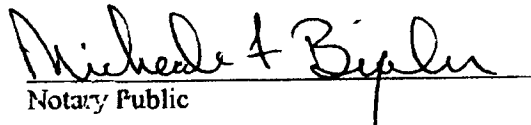
16. Even if the Commission determines that the *Supplemental Order Clarification* is somehow relevant to this dispute, which it is not, BellSouth has met the alleged criteria set forth in the *Order*. BellSouth hired an independent auditor and provided NewSouth with thirty days notice of its intent to audit. And even if BellSouth were required to articulate a “concern” before initiating an audit, BellSouth has done so, as evidenced by my July 17, 2002 letter setting forth BellSouth’s concerns.

17. The parties made extensive and good faith efforts to resolve this dispute prior to the filing of the Formal Complaint, including a face-to-face meeting on May 5, 2003.

18. This concludes my statement.

  
Jerry D. Hendrix

Affirmed to before me this 14<sup>th</sup> day  
of October, 2003.

  
Notary Public

**MICHEALE F. BOXLER**  
Notary Public, Douglas County, Georgia  
My Commission Expires November 3, 2006

# **EXHIBIT F**

**LETTER TO JERRY HENDRIX FROM JAKE JENNINGS,  
DATED MAY 23, 2002**



May 23, 2002

Via overnight and Electronic Mail

Mr. Jerry Hendrix  
BellSouth Telecommunications  
Interconnection Services  
675 W. Peachtree Street, NE  
Room 34S91  
Atlanta, GA 30375

RE: EEL Audit

Dear Jerry:

Based upon new information and further consideration, NewSouth formally disputes BellSouth's request to audit special access circuits that have been converted to unbundled loop/transport combinations ("Enhanced Extended Links - EELs"). To the extent that we are unable to reach agreement concerning the final disposition of the audit, and BellSouth still insists on having one, BellSouth should seek appropriate relief through the Dispute Resolution Process of the BellSouth/NewSouth Interconnection Agreement, dated May 18, 2001. NewSouth, too, may seek regulatory agency involvement as a means of resolving this issue.

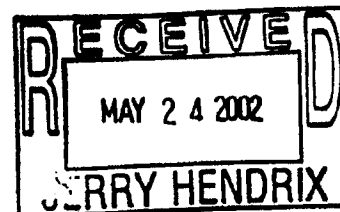
As you now may be aware, the Federal Communications Commission's Supplemental Order Clarification Order, Docket No. 96-98 adopted May 19, 2000 and released June 2, 2000 ("Supplemental Order") clearly stated that (1) audits may not be routine and only be conducted under limited circumstances;<sup>1</sup> and (2) audit must be performed by an independent third party hired and paid for by the incumbent local exchange company.<sup>2</sup> Based on information recently discovered by NewSouth - much of it included in the Petition for Declaratory Rulemaking of NuVox, Inc. filed in FCC Docket 96-98 on May 17, 2002, it is NewSouth's opinion that neither of these requirements has been met.

Indeed, just as BellSouth failed to state a reasonable "concern" regarding compliance with respect to NuVox, it also has failed to do so with NewSouth in its April 26, 2002 letter. Moreover, NewSouth understands that BellSouth's audit request to NewSouth is one of at least a dozen - demonstrating BellSouth's defiance of the FCC's directive (and its own prior commitment) that such audits will not be routine.

<sup>1</sup> Supplemental Order Clarification, para. 31, n. 86.

<sup>2</sup> Supplemental Order Clarification, para. 31.

NewSouth Communications  
Two North Main Street  
Greenville, SC 29601  
864-672-5000

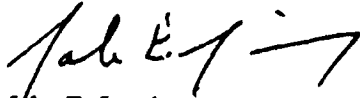


NewChoice. NewTechnology. NewValue.



Although I initially accepted BellSouth's assertion that its selected auditor is independent, the allegations in the NuVox petition compel me to reject that assertion now, as I have been able to confirm that the same auditor has been hired to conduct the audits of both NuVox's and NewSouth's records. If BellSouth wishes to renew its audit request, NewSouth insists that a new and truly independent auditor be selected if it is determined that such an audit is warranted. NewSouth remains willing to discuss these and several other unresolved issues regarding BellSouth's audit request. However, until these threshold issues are resolved to NewSouth's satisfaction or resolved by the FCC, NewSouth is unwilling to devote precious resources toward the proposed unauthorized audit of NewSouth's converted EEL circuits.

Sincerely,



Jake E. Jennings  
Vice President - Regulatory Affairs  
NewSouth Communications Corp.

cc: Kyle Dixon, FCC (via electronic mail)  
Matthew Brill, FCC (via electronic mail)  
Daniel Gonzalez, FCC (via electronic mail)  
Jordan Goldstein, FCC (via electronic mail)  
Dorothy Attwood, FCC (via electronic mail)  
Michelle Carey, FCC (via electronic mail)  
Jodie Donovan-May (via electronic mail)

*NewSouth Communications*  
*Two North Main Street*  
*Greenville, SC 29601*  
*864-672-5000*

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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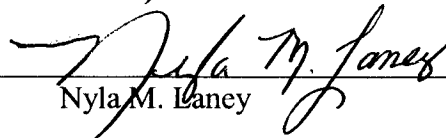
CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Complaint and Request for Summary Disposition Against NewSouth Communications Corp in Docket No. \_\_\_\_\_ to be served on the following this March 5, 2004:

F. David Butler, Esquire  
General Counsel  
S. C. Public Service Commission  
Post Office Box 11649  
Columbia, South Carolina 29211  
(PSC Staff)  
**(U. S. Mail and Electronic Mail)**

John J. Pringle, Jr., Esquire  
Ellis Lawhorne & Sims, P.A.  
1501 Main Street, 5<sup>th</sup> Floor  
Columbia, South Carolina 29201  
(NewSouth Communications, Corp.)  
**(U. S. Mail and Electronic Mail)**

Stephen H. Shoemaker  
Two N. Main Street  
Greenville, South Carolina 29601  
**(Certified Mail)**

  
\_\_\_\_\_  
Nyla M. Laney

SC PUBLIC SERVICE  
COMMISSION

2004 MAR -5 AM 8:54

RECEIVED